

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 394
92ND GENERAL ASSEMBLY

Reported from the Committee on Judiciary April 15, 2003, with recommendation that the House Committee Substitute for Senate Bill No. 394 Do Pass by Consent.

STEPHEN S. DAVIS, Chief Clerk

1411L.05C

AN ACT

To repeal sections 347.700, 347.720, 351.268, 351.315, 351.320, 351.385, 351.455, 358.150, 358.520 and 359.165, RSMo, and to enact in lieu thereof twenty-one new sections relating to general and business corporations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 347.700, 347.720, 351.268, 351.315, 351.320, 351.385, 351.455, 358.150, 358.520, and 359.165, RSMo, are repealed and twenty-one new sections enacted in lieu thereof, to be known as sections 347.700, 347.720, 351.056, 351.268, 351.315, 351.320, 351.385, 351.455, 358.150, 358.520, 359.165, 409.970, 409.971, 409.975, 409.980, 409.981, 409.985, 409.986, 409.987, 409.988, and 409.989, to read as follows:

347.700. 1. A merger or consolidation solely between any two or more domestic corporations or one or more domestic corporations and one or more foreign corporations shall be governed by and subject to chapter 351 or 355, RSMo, as is applicable.

2. A merger or consolidation solely between any two or more domestic general partnerships or one or more domestic general partnerships and one or more foreign general partnerships shall be governed by and subject to section 358.520, RSMo.

[2.] 3. A merger or consolidation solely between any two or more domestic limited partnerships or one or more domestic limited partnerships and one or more foreign limited partnerships shall be governed by and subject to section 359.165, RSMo.

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

10 [3.] 4. A merger or consolidation solely between any two or more domestic limited
11 liability companies or one or more domestic limited liability companies and one or more foreign
12 limited liability companies shall be governed by sections 347.127 to 347.133.

13 [4.] 5. A business combination involving any resident domestic corporation and any
14 interested shareholder of such resident domestic corporation shall be governed by and subject
15 to section 351.459, RSMo.

16 [5.] 6. Subject to the provisions of this section, any merger or consolidation between one
17 or more domestic corporations and any one or more constituent entities at least one of which is
18 not a corporation, one or more domestic general partnerships and any one or more constituent
19 entities at least one of which is not a general partnership, one or more domestic limited
20 partnerships and any one or more constituent entities at least one of which is not a limited
21 partnership, one or more domestic limited liability partnerships and any one or more constituent
22 entities at least one of which is not a limited liability partnership, one or more domestic limited
23 liability limited partnerships and any one or more constituent entities at least one of which is not
24 a limited liability limited partnership, or one or more domestic limited liability companies and
25 any one or more constituent entities at least one of which is not a limited liability company shall
26 be governed by and subject to the provisions of sections 347.700 to 347.735.

 347.720. 1. The agreement of merger or consolidation required by section 347.715 shall
2 be authorized and approved in the following manner:

3 (1) A constituent entity that is a domestic general partnership shall have the agreement
4 of merger or consolidation authorized and approved by all of the partners, unless otherwise
5 provided in the articles or agreement of partnership;

6 (2) A constituent [estate] **entity** that is a domestic **limited** partnership shall have the
7 agreement of merger or consolidation approved by all general partners and by all of the limited
8 partners unless otherwise provided in the articles or agreement of limited partnership;

9 (3) A constituent [estate] **entity** that is a domestic corporation shall have the agreement
10 of merger or consolidation approved in the manner applicable to a merger of two or more
11 domestic corporations as provided in chapter 351 or 355, RSMo, as is applicable;

12 (4) A constituent entity that is a domestic limited liability company shall have the
13 agreement of merger or consolidation approved in the manner provided in section 347.079; and

14 (5) Each constituent entity formed under the laws of a jurisdiction other than this state
15 shall have the agreement of merger or consolidation approved in accordance with the laws of
16 such other jurisdiction.

17 2. The fact that the agreement of merger or consolidation has been authorized and
18 approved in accordance with this section shall be certified on the agreement of merger or
19 consolidation on behalf of each constituent entity:

- 20 (1) In the case of any domestic general or limited partnership, by any general partner;
21 (2) In the case of any domestic corporation, by its president or a vice president, and by
22 its secretary or an assistant secretary;
23 (3) In the case of any domestic limited liability company, by any authorized person as
24 defined in section 347.015; and
25 (4) In the case of any constituent entity formed under the laws of any jurisdiction other
26 than this state, in accordance with the laws of such other jurisdiction.
27 3. After the agreement of merger or consolidation is authorized and approved, unless the
28 agreement of merger or consolidation provides otherwise, and at any time before the agreement
29 of merger or consolidation or certificate of merger or consolidation is effective as provided for
30 in section 347.725, the agreement of merger or consolidation may be abandoned, subject to any
31 contractual rights, in accordance with the procedure set forth in the agreement of merger or
32 consolidation or, if none is set forth, with the approval of those persons or individuals entitled
33 to approve the merger or consolidation as provided in subsection 1 of this section.

**351.056. Every corporation may in its articles of incorporation confer upon the
2 holders of any bonds, debentures, or other obligations issued or to be issued by the
3 corporation the power to vote in respect to the corporate affairs and management of the
4 corporation to the extent and in the manner provided in the articles of incorporation and
5 may confer upon such holders of bonds, debentures, or other obligations the same right of
6 inspection of its books, accounts, and other records, and any other rights which the
7 shareholders of the corporation have or may have by reason of this chapter or of the
8 corporation's articles of incorporation. If the articles of incorporation so provide, such
9 holders of bonds, debentures, or other obligations shall be deemed to be shareholders and
10 their bonds, debentures, or other obligations shall be deemed to be shares of stock for the
11 purpose of any provision of this chapter which requires the vote of shareholders as a
12 prerequisite to any corporate action, and the articles of incorporation may divest the
13 holders of capital stock, in whole or in part, of their right to vote on any corporate matter
14 whatsoever, except as set forth in section 351.093.**

351.268. 1. In addition to the provisions of sections 351.265 and 351.267 regarding the
2 adjournment of shareholders meetings at which a quorum is not present, unless the bylaws
3 provide to the contrary, a meeting may be otherwise successively adjourned to a specified date
4 not longer than ninety days after such adjournment or to another place. Notice need not be given
5 of the adjourned meeting if the time and place thereof are announced at the meeting at which the
6 adjournment is taken. At the adjourned meeting the corporation may transact any business which
7 might have been transacted at the original meeting. If the adjournment is for more than ninety
8 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice

9 of the date and place of the adjourned meeting shall be given to each shareholder of record
10 entitled to vote at the meeting.

11 2. A shareholder's meeting may be successively postponed by resolution of the board of
12 directors, unless otherwise provided in the bylaws, to a specified date up to a date ninety days
13 after such postponement or to another place, provided notice of the date and place of the
14 postponed meeting, which may be by public notice, is given to each shareholder of record
15 entitled to vote at the meeting [prior to the date previously scheduled for such meeting].

16 3. For purposes of this chapter, "adjournment" means a delay in the date, which may also
17 be combined with a change in the place, of a meeting after the meeting has been convened;
18 "postponement" means a delay in the date, which may be combined with a change in the place,
19 of the meeting before it has been convened, but after the time and place thereof have been set
20 forth in a notice delivered or given to shareholders; and public notice shall be deemed to have
21 been given if a public announcement is made by press release reported by a national news service
22 or in a publicly available document filed with the United States Securities and Exchange
23 Commission.

351.315. 1. A corporation shall have three or more directors, except that a corporation
2 may have one or two directors provided the number of directors to constitute the board of
3 directors is stated in the articles of incorporation. Any corporation may elect its directors for one
4 or more years, not to exceed three years, the time of service and mode of classification to be
5 provided for by the articles of incorporation or the bylaws of the corporation; but, there shall be
6 an annual election for such number or proportion of directors as may be found upon dividing the
7 entire number of directors by the number of years composing a term. At the first annual meeting
8 of shareholders and at each annual meeting thereafter the shareholders entitled to vote shall elect
9 directors to hold office until the next succeeding annual meeting, except as herein provided.
10 Each director shall hold office for the term for which he is elected or until his successor shall
11 have been elected and qualified.

12 2. **The articles of incorporation may confer upon holders of any class or series of**
13 **stock the right to elect one or more directors who shall serve for such term and shall have**
14 **such voting powers as shall be stated in the articles of incorporation. The terms of office**
15 **and voting powers of the directors elected in the manner so provided in the articles of**
16 **incorporation may be greater than or less than those of any other director or class of**
17 **directors. If the articles of incorporation provide that directors elected by the holders of**
18 **a class or series of stock shall have more or less than one vote per director on any matter,**
19 **every reference in this chapter to a majority or other proportion of directors shall refer to**
20 **a majority or other proportion of the votes of such directors.**

21 3. At a meeting called expressly for that purpose, directors may be removed in the

22 manner provided in this section. Such meeting shall be held at the registered office or principal
23 business office of the corporation in this state or in the city or county in this state in which the
24 principal business office of the corporation is located. Unless the articles of incorporation or the
25 bylaws provide otherwise, one or more directors or the entire board of directors may be removed,
26 with or without cause, by a vote of the holders of a majority of the shares then entitled to vote
27 at an election of directors. If the articles of incorporation or bylaws provide for cumulative
28 voting in the election of directors, if less than the entire board is to be removed, no one of the
29 directors may be removed if the votes cast against [his] **such director's** removal would be
30 sufficient to elect [him] **such director** if then cumulatively voted at an election of the entire
31 board of directors, or, if there be classes of directors, at an election of the class of directors of
32 which [he] **such director** is a part. Whenever the holders of the shares of any class are entitled
33 to elect one or more directors by the provisions of the articles of incorporation, the provisions
34 of this section shall apply, in respect of the removal of a director or directors so elected, to the
35 vote of the holders of the outstanding shares of that class and not to the vote of the outstanding
36 shares as a whole.

37 [3.] **4.** The corporation shall give written notice to the secretary of state of the number
38 of directors of the corporation as fixed by any method. The notice shall be given within thirty
39 days of the date when the number of directors is fixed, and similar notice shall be given
40 whenever the number of directors is changed.

351.320. **1.** Unless otherwise provided in the articles of incorporation or bylaws of the
2 corporation, vacancies on the board and newly created directorships resulting from any increase
3 in the number of directors to constitute the board of directors may be filled by a majority of the
4 directors then in office, although less than a quorum, or by a sole remaining director, until the
5 next election of directors by the shareholders of the corporation; except that, if shareholders elect
6 directors by class pursuant to section 351.315, a director elected by the board pursuant to this
7 section to fill a vacancy or to a newly created directorship need not be presented for election by
8 shareholders until the class to which the director has been so elected by the board is presented
9 for election by the shareholders.

10 **2. Whenever the holders of any class or classes of stock or series thereof are entitled**
11 **to elect one or more directors by the articles of incorporation, vacancies and newly created**
12 **directorships of such class or classes or series may be filled by a majority of the directors**
13 **elected by such class or classes or series thereof then in office.**

351.385. Each corporation shall have power:

- 2 (1) To have succession by its corporate name for the period limited in its articles of
3 incorporation or perpetually where there is no such limitations;
- 4 (2) To sue and be sued, complain and defend in any court of law or equity;

5 (3) To have a corporate seal which may be altered at pleasure and to use the same by
6 causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced;

7 (4) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and
8 otherwise deal in, sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose
9 of all or any part of its real or personal property, or any interest therein, or other assets, wherever
10 situated; and to hold for any period of time, real estate acquired in payment of a debt, by
11 foreclosure or otherwise, or real estate exchanged therefor;

12 (5) To be a general or limited partner;

13 (6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use,
14 employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and
15 with, shares or other interests in, or obligations of, other domestic or foreign corporations,
16 associations, partnerships, or individuals, or direct or indirect obligations of the United States
17 or of any other government, state, territory, governmental district or municipality or of any
18 instrumentality thereof;

19 (7) To make contracts and guarantees, including but not limited to guarantees of the
20 capital stock, bonds, other securities, evidences of indebtedness and other debts and obligations
21 issued by any other corporation of this or any other state, or issued by any state or other political
22 subdivision thereof; to incur liabilities; to borrow money at such rates of interest as the
23 corporation may determine without regard to the restrictions of any usury law of this state; to
24 issue its notes, bonds, and other obligations; to issue notes or bonds, secured or unsecured, which
25 by their terms are convertible into shares of stock of any class, upon such terms and conditions
26 and at such rates or prices as may be provided in such notes or bonds and the indenture or
27 mortgage under which they are issued; and to secure any of its obligations by mortgage, pledge,
28 or deed of trust of all or any of its property, franchises, and income;

29 (8) To invest its surplus funds from time to time and to lend money and to take and hold
30 real and personal property as security for the payment of funds so invested or loaned;

31 (9) To conduct its business, carry on its operations, and have offices within and without
32 this state, and to exercise in any other state, territory, district, or possession of the United States,
33 or in any foreign country, the powers granted by this chapter;

34 (10) To elect or appoint directors, officers and agents of the corporation, define their
35 duties and fix their compensation, and to indemnify directors, officers and employees to the
36 extent and in the manner permitted by law;

37 (11) To make and alter bylaws, not inconsistent with its articles of incorporation or with
38 the laws of this state, for the administration and regulation of the affairs of the corporation, and
39 to adopt emergency bylaws and exercise emergency powers as permitted by law;

40 (12) To transact any lawful business in aid of the United States in the prosecution of war,

41 to make donations to associations and organizations aiding in war activities, and to lend money
42 to the state or federal government for war purposes;

43 (13) To cease its corporate activities and surrender its corporate franchise;

44 (14) To have and exercise all powers necessary or convenient to effect any or all of the
45 purposes for which the corporation is formed;

46 (15) To make contributions to any corporation organized for civic, charitable,
47 benevolent, scientific or educational purposes, or to any incorporated or unincorporated
48 association, community chest or community fund, not operated or used for profit to its members
49 but operated for the purposes of raising funds for and of distributing funds to other civic,
50 charitable, benevolent, scientific or educational organizations or agencies;

51 **(16) To renounce, in its articles of incorporation or by action of its board of**
52 **directors, any interest or expectancy of the corporation in, or in being offered an**
53 **opportunity to participate in, specified business opportunities or specified classes or**
54 **categories of business opportunities that are presented to the corporation, or one or more**
55 **of its officers, directors, or stockholders.**

351.455. 1. If a shareholder of a corporation which is a party to a merger or
2 consolidation [shall file with such corporation, prior to or] **and, in the case of a shareholder**
3 **owning voting stock, is entitled to vote** at the meeting of shareholders at which the plan of
4 merger or consolidation is submitted to a vote[,]
5 **shall file with such corporation prior to or**
6 **at such meeting** a written objection to such plan of merger or consolidation, and shall not vote
7 in favor thereof, and such shareholder, within twenty days after the merger or consolidation is
8 effected, shall make written demand on the surviving or new corporation for payment of the fair
9 value of his **or her** shares as of the day prior to the date on which the vote was taken approving
10 the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon
11 surrender of his **or her** certificate or certificates representing said shares, the fair value thereof.
12 Such demand shall state the number and class of the shares owned by such dissenting
13 shareholder. Any shareholder failing to make demand within the twenty day period shall be
14 conclusively presumed to have consented to the merger or consolidation and shall be bound by
15 the terms thereof.

16 2. If within thirty days after the date on which such merger or consolidation was effected
17 the value of such shares is agreed upon between the dissenting shareholder and the surviving or
18 new corporation, payment therefor shall be made within ninety days after the date on which such
19 merger or consolidation was effected, upon the surrender of his **or her** certificate or certificates
20 representing said shares. Upon payment of the agreed value the dissenting shareholder shall
21 cease to have any interest in such shares or in the corporation.

3. If within such period of thirty days the shareholder and the surviving or new

22 corporation do not so agree, then the dissenting shareholder may, within sixty days after the
23 expiration of the thirty day period, file a petition in any court of competent jurisdiction within
24 the county in which the registered office of the surviving or new corporation is situated, asking
25 for a finding and determination of the fair value of such shares, and shall be entitled to judgment
26 against the surviving or new corporation for the amount of such fair value as of the day prior to
27 the date on which such vote was taken approving such merger or consolidation, together with
28 interest thereon to the date of such judgment. The judgment shall be payable only upon and
29 simultaneously with the surrender to the surviving or new corporation of the certificate or
30 certificates representing said shares. Upon the payment of the judgment, the dissenting
31 shareholder shall cease to have any interest in such shares, or in the surviving or new
32 corporation. Such shares may be held and disposed of by the surviving or new corporation as
33 it may see fit. Unless the dissenting shareholder shall file such petition within the time herein
34 limited, such shareholder and all persons claiming under [him] **such shareholder** shall be
35 conclusively presumed to have approved and ratified the merger or consolidation, and shall be
36 bound by the terms thereof.

37 4. The right of a dissenting shareholder to be paid the fair value of [his] **such**
38 **shareholder's** shares as herein provided shall cease if and when the corporation shall abandon
39 the merger or consolidation.

40 **5. When the remedy provided for in this section is available with respect to a**
41 **transaction and the shareholder has exercised the right to appraisal pursuant to subsection**
42 **1 of this section, or the shareholder has made an affirmative election to receive the**
43 **consideration offered pursuant to the plan of merger or consolidation, such remedy shall**
44 **be the exclusive remedy of the shareholder as to that transaction, except in the case of**
45 **fraud or lack of authorization for the transaction.**

358.150. 1. Except as provided in subsection 2 of this section, all partners are liable
2 jointly and severally for everything chargeable to the partnership pursuant to sections 358.130
3 and 358.140, and for all other debts and obligations of the partnership. Any partner may enter
4 into a separate obligation to perform a partnership contract.

5 2. Subject to subsection 3 of this section, no partner in a registered limited liability
6 partnership shall be liable or accountable, directly or indirectly, including by way of
7 indemnification, contribution, assessment or otherwise, for any debts, obligations and liabilities
8 of, or chargeable to, the partnership or each other, whether in tort, contract or otherwise, which
9 are incurred, created or assumed by such partnership while the partnership is a registered limited
10 liability partnership.

11 3. Subsection 2 of this section shall not affect the liability of a partner in a registered
12 limited liability partnership for the partner's own negligence, wrongful acts, omissions,

13 misconduct or malpractice [or that of any person under the partner's direct supervision and
14 control] or the partner's liability for any taxes or fees administered by the department of revenue
15 pursuant to chapter 143, 144 or 301, RSMo, and any liabilities owed as determined by the
16 division of employment security, pursuant to chapter 288, RSMo, and any local taxes provided
17 for in section 32.087, RSMo.

18 4. A partner is not a proper party to a proceeding by or against a registered limited
19 liability partnership, the object of which is to recover damages or enforce obligations arising out
20 of acts, omissions, malpractice or misconduct of the type described in subsection 2 of this
21 section, unless the partner is personally liable pursuant to subsection 1 or 3 of this section.

22 5. A registered limited liability partnership may sue and be sued in its own name.

23 6. Venue of claims against registered limited liability partnerships shall be controlled
24 pursuant to section 508.010, RSMo, and, for purposes of venue, a registered limited liability
25 partnership shall be deemed to be a citizen and resident of the county in which it has any office
26 or agent for the transaction of its usual and customary business activities or in which its
27 registered office or registered agent is located.

28 7. Service of process upon a registered limited liability partnership may be had by
29 delivering a copy of the summons and petition to the partnership's registered agent, a partner,
30 managing or general agent or by leaving the copies at any business office of the registered
31 limited liability partnership with the person having charge thereof.

358.520. 1. Pursuant to an agreement of merger or consolidation, a domestic
2 general partnership may merge or consolidate with or into one or more general
3 partnerships formed under the laws of this state or any other jurisdiction, with such
4 general partnership as the agreement shall provide being the surviving or resulting general
5 partnership. A domestic general partnership may merge or consolidate with [or into] one or
6 more domestic or foreign limited [general] partnerships [or domestic or foreign limited
7 partnerships, limited liability companies, trusts, business trusts, corporations, real estate
8 investment trusts and other associations or business entities], limited liability companies,
9 trusts, business trusts, corporations, real estate investment trusts and other associations
10 or business entities at least one of which is not a general partnership, as provided in sections
11 347.700 to 347.735, RSMo.

12 2. The agreement of merger or consolidation shall be approved by the number or
13 percentage of partners specified in the partnership agreement. If the partnership
14 agreement fails to specify the required partner approval for merger or consolidation of the
15 general partnership, then the agreement of merger or consolidation shall be approved by
16 that number or percentage of partners specified by the partnership agreement to approve
17 an amendment to the partnership agreement. However, if the merger effects a change for

18 which the partnership agreement requires a greater number or percentage of partners
19 than that required to amend the partnership agreement, then the merger or consolidation
20 shall be approved by that greater number or percentage. If the partnership agreement
21 contains no provision specifying the vote required to amend the partnership agreement,
22 then the agreement of merger must be approved by all the partners.

23 3. In the case of a merger or consolidation of one or more domestic partnerships
24 into a surviving partnership, the surviving partnership shall file articles of merger or
25 consolidation with the secretary of state setting forth:

26 (1) The name of each party to the merger or consolidation;

27 (2) The effective date of the merger or consolidation which shall be the date the
28 articles of merger or consolidation are filed with the secretary of state or on a later date set
29 forth in the articles of merger or consolidation not to exceed ninety days after the filing
30 date;

31 (3) The name of the surviving partnership in a merger or the new partnership in
32 a consolidation and the state of its formation;

33 (4) A statement that the merger or consolidation was authorized and approved by
34 the partners of each party to the merger or consolidation in accordance with the laws of
35 the jurisdiction where it was organized;

36 (5) If applicable, the address of the registered office and the name of the registered
37 agent at such office for the surviving or new partnership;

38 (6) A statement that the executed agreement of merger or consolidation is on file
39 at the principal place of business of the surviving or new partnership, stating the address
40 of such place of business; and

41 (7) A statement that a copy of the agreement of merger or consolidation will be
42 furnished by the surviving or new partnership, on request and without cost, to any partner
43 of any entity that is a party to the merger or consolidation.

44 4. The certificate of merger or consolidation shall be executed by at least one
45 general partner of each domestic partnership and one authorized agent, or its equivalent,
46 for the other party to the merger or consolidation who is duly authorized to execute such
47 notice.

48 5. If, following a merger or consolidation of one or more domestic partnerships and
49 one or more partnerships formed under the laws of any state, the surviving or resulting
50 partnership is not a domestic partnership, there shall be attached to the articles of merger
51 or consolidation filed pursuant to subsection 3 of this section a certificate executed by the
52 surviving or resulting partnership, stating that such surviving or resulting partnership may
53 be served with process in this state in any action, suit or proceeding for the enforcement

54 of any obligation of such domestic partnership, irrevocably appointing the secretary of
55 state as such surviving or resulting partnership's agent to accept service of process in any
56 such action, suit or proceeding and specifying the address to which a copy of such process
57 shall be mailed to such surviving or resulting partnership to the secretary of state.

58 **6. When the articles of merger or consolidation required by subsection 3 of this**
59 **section shall have become effective, for all purposes of the laws of this state, all the rights,**
60 **privileges, franchises and powers of each of the partnerships that have merged or**
61 **consolidated, and all property, real, personal, and mixed, and all debts due to any of such**
62 **partnerships, as well as all other things and causes of action belonging to each of such**
63 **partnerships shall be vested in the surviving or resulting partnership, and shall thereafter**
64 **be the property of the surviving or resulting partnership as they were of each of the**
65 **partnerships that have merged or consolidated, and the title to any real property vested by**
66 **deed or otherwise, under the laws of this state, in any such partnerships, shall not revert**
67 **or be in any way impaired by reason of this section; but all rights of creditors and all liens**
68 **upon any property of any such partnerships shall be preserved unimpaired, and all debts,**
69 **liabilities and duties of each of the partnerships that have merged or consolidated shall**
70 **thenceforth attach to the surviving or resulting partnership, and may be enforced against**
71 **such surviving or resulting partnership to the same extent as if such debts, liabilities, and**
72 **duties had been incurred or contracted by such surviving or resulting partnership.**

359.165. 1. Pursuant to an agreement of merger or consolidation, a domestic limited
2 partnership may merge or consolidate with or into one or more limited partnerships formed under
3 the laws of this state or any other jurisdiction, with such limited partnership as the agreement
4 shall provide being the surviving or resulting limited partnership. A domestic limited partnership
5 may merge or consolidate with one or more domestic or foreign general partnerships, limited
6 liability companies, trusts, business trusts, corporations, real estate investment trusts and other
7 associations or business entities at least one of which is not a limited partnership, as provided
8 in sections 347.700 to 347.735, RSMo.

9 **2. The agreement of merger or consolidation shall be approved by the number or**
10 **percentage of general and limited partners specified in the partnership agreement. If the**
11 **partnership agreement fails to specify the required partner approval for merger or**
12 **consolidation of the limited partnership, then the agreement of merger or consolidation**
13 **shall be approved by that number or percentage of general and limited partners specified**
14 **by the partnership agreement to approve an amendment to the partnership agreement.**
15 **However, if the merger effects a change for which the partnership agreement requires a**
16 **greater number or percentage of general and limited partners than that required to amend**
17 **the partnership agreement, then the merger or consolidation shall be approved by that**

18 **greater number or percentage. If the partnership agreement contains no provision**
19 **specifying the vote required to amend the partnership agreement, then the agreement of**
20 **merger must be approved by all the general and limited partners.**

21 [2.] 3. In the case of a merger or consolidation of one or more domestic limited
22 partnerships into a surviving limited partnership, the surviving limited partnership shall file
23 articles of merger or consolidation with the secretary of state setting forth:

24 (1) The name of each party to the merger or consolidation;

25 (2) The effective date of the merger or consolidation which shall be the date the articles
26 of merger or consolidation are filed with the secretary or on a later date set forth in the articles
27 of merger or consolidation not to exceed ninety days after the filing date;

28 (3) The name of the surviving limited partnership in a merger or the new limited
29 partnership in a consolidation and the state of its formation;

30 (4) A statement that the merger or consolidation was authorized and approved by the
31 partners of each party to the merger or consolidation in accordance with the laws of the
32 jurisdiction where it was organized;

33 (5) If applicable, the address of the registered office and the name of the registered agent
34 at such office for the surviving or new limited partnership;

35 (6) In the case of a merger in which a domestic limited partnership is the surviving
36 entity, such amendments or changes to the certificate of limited partnership of the surviving
37 limited partnership as are desired to be effected by the merger, or, if no such amendments or
38 changes are desired, a statement that the certificate of limited partnership of the surviving limited
39 partnership shall not be amended or changed as a result of the merger;

40 (7) In the case of a consolidation in which a domestic limited partnership is the
41 continuing limited partnership, the certificate of limited partnership of the new domestic limited
42 partnership shall be set forth in an attachment to the certificate of consolidation;

43 (8) A statement that the executed agreement of merger or consolidation is on file at the
44 principal place of business of the surviving or new limited partnership, stating the address of
45 such place of business; and

46 (9) A statement that a copy of the agreement of merger or consolidation will be furnished
47 by the surviving or new limited partnership, on request and without cost, to any partner of any
48 entity that is a party to the merger or consolidation.

49 [3.] 4. The certificate of merger or consolidation shall be executed by at least one general
50 partner of each domestic limited partnership and one authorized agent, or its equivalent, for the
51 other party to the merger or consolidation who is duly authorized to execute such notice.

52 [4.] 5. In the case of a merger of one or more domestic limited partnerships into a
53 surviving limited partnership, the certificate of limited partnership of the surviving domestic

54 limited partnership shall be amended to the extent provided in the articles of merger and the
55 certificates of limited partnership of each other domestic limited partnership shall be deemed
56 canceled by the filing of the articles of merger with the secretary of state.

57 [5.] 6. If, following a merger or consolidation of one or more domestic limited
58 partnerships and one or more limited partnerships formed under the laws of any state, the
59 surviving or resulting limited partnership is not a domestic limited partnership, there shall be
60 attached to the articles of merger or consolidation filed pursuant to subsection [2] 3 of this
61 section a certificate executed by the surviving or resulting limited partnership, stating that such
62 surviving or resulting limited partnership may be served with process in this state in any action,
63 suit or proceeding for the enforcement of any obligation of such domestic limited partnership,
64 irrevocably appointing the secretary of state as such surviving or resulting limited partnership's
65 agent to accept service of process in any such action, suit or proceeding and specifying the
66 address to which a copy of such process shall be mailed to such surviving or resulting limited
67 partnership to the secretary of state.

68 [6.] 7. When the articles of merger or consolidation required by subsection [2] 3 of this
69 section shall have become effective, for all purposes of the laws of this state, all of the rights,
70 privileges, franchises and powers of each of the limited partnerships that have merged or
71 consolidated, and all property, real, personal and mixed, and all debts due to any of such limited
72 partnerships, as well as all other things and causes of action belonging to each of such limited
73 partnerships shall be vested in the surviving or resulting limited partnership, and shall thereafter
74 be the property of the surviving or resulting limited partnership as they were of each of the
75 limited partnerships that have merged or consolidated, and the title to any real property vested
76 by deed or otherwise, under the laws of this state, in any such limited partnerships, shall not
77 revert or be in any way impaired by reason of this section; but all rights of creditors and all liens
78 upon any property of any of such limited partnerships shall be preserved unimpaired, and all
79 debts, liabilities and duties of each of the limited partnerships that have merged or consolidated
80 shall thenceforth attach to the surviving or resulting limited partnership, and may be enforced
81 against such surviving or resulting limited partnership to the same extent as if such debts,
82 liabilities and duties had been incurred or contracted by such surviving or resulting limited
83 partnership.

2 **409.970. Sections 409.970 to 409.989 shall be known and may be cited as the**
2 **"Missouri Corporate Governance Act".**

2 **409.971. As used in sections 409.970 to 409.989, the following terms shall mean:**

2 **(1) "Federal covered security", a security that is, or upon completion of a**
3 **transaction will be, a covered security under Section 18(b) of the federal Securities Act of**
4 **1933, 15 U.S.C. Section 77r(b), and any rules or regulations adopted pursuant thereto;**

5 (2) "Independent director", a person who is a member of the board of directors of
6 a state covered company and who does not, other than in the capacity as a member of the
7 board of directors or any board committee, accept any consulting, advisory, or other
8 compensatory fee from the state covered company and who is not an affiliated person of
9 the state covered company or any subsidiary thereof;

10 (3) "State covered company", any corporation or company that has at least twenty-
11 five beneficial holders of its securities that reside in Missouri and such securities are not
12 federal covered securities.

 409.975. It is unlawful for any person to offer or sell a security in this state that is
2 issued by a state covered company but is not a federal covered security unless the state
3 covered company maintains at least one independent director on its board of directors and
4 fails to replace such independent director within ninety days of the vacancy of the
5 directorship.

 409.980. 1. It is unlawful for any person to offer or sell a security in this state that
2 is issued by a state covered company but is not a federal covered security, if the state
3 covered company directly or indirectly, including through any subsidiary, has extended
4 or maintained credit, arranged for the extension of credit, or renewed the extension of
5 credit in the form of a personal loan to or for any officer or director of the state covered
6 company or intends to extend or maintain credit, arrange credit, or renew the extension
7 of credit in the form of a personal loan to or for any officer or director of the state covered
8 company.

9 2. The prohibition in this section does not apply to the following:

10 (1) Advances to officers or directors for travel, business expense, or any other
11 similar ordinary operating expenditures;

12 (2) Loans for relocation of officers or directors; provided that the loans or loan
13 guarantees that are ongoing are approved by a majority of the independent directors of the
14 state covered company's board of directors; and

15 (3) Loans made by a state covered company whose primary business is that of
16 consumer credit; provided that:

17 (a) The loans are made or provided in the ordinary course of the consumer credit
18 business of such state covered company;

19 (b) The loans are of a type that are generally made available by such state covered
20 company to the public; and

21 (c) The loans are made by such state covered company on market terms or terms
22 that are no more favorable than those offered by the state covered company to the general
23 public for such extensions of credit.

409.981. It is unlawful for any person with intent to avoid, evade, or prevent compliance with, in whole or in part, any request or subpoena issued under this chapter, to remove from anyplace, conceal, withhold or destroy, mutilate, alter, or by any other means falsify any information, documentary material, electronic or physical evidence in the possession, custody, or control of any person which is the subject of any investigation under this chapter. Violation of this section shall create a presumption that the party who violates this section is in civil contempt of an order of the court that issued the subpoena and that the documents destroyed contained information detrimental to the party who violates this section and his or her principle.

409.985. Any individual or entity that is a shareholder of the corporation at the time of any willful violation of sections 409.970 to 409.989 may, within two years of the date of the aforesaid violation, maintain a civil cause of action for rescission of the purchase price of their shares, plus litigation costs and reasonable attorney's fees for the prosecution of their action.

409.986. Pursuant to the authority of section 409.602, the commissioner of securities may conduct such investigations as the commissioner deems necessary to determine whether a person has violated, is violating, or is about to violate any provision of sections 409.970 to 409.989, or any order, rule, or regulation issued or promulgated pursuant thereto.

409.987. If the commission of securities believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of sections 409.970 to 409.989, or any order, rule, or regulation issued or promulgated pursuant thereto, or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of sections 409.970 to 409.989, or any order, rule, or regulation issued or promulgated pursuant thereto, the commissioner of securities may maintain an action for relief authorized pursuant to section 409.603.

409.988. If the commissioner of securities determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of sections 409.970 to 409.989, or any order, rule, or regulation issued or promulgated pursuant thereto, or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of sections 409.970 to 409.989, or any order, rule, or regulation issued or promulgated pursuant thereto, the commissioner of securities may issue such orders as authorized pursuant to section 409.604.

409.989. Sections 409.970 to 409.989 shall be administered by the commissioner of securities and employees designated by the commissioner. The commissioner of securities

3 is hereby empowered to promulgate, alter, amend, or revoke rules and regulations
4 pursuant to section 409.605 as necessary to carry out the purposes of sections 409.970 to
5 409.989.